**C.R. General, Inc. *and* International Brotherhood of Electrical Workers, Local Union No. 481 *and* Papino S. Loyd.** Cases 25–CA–23778, 25–CA–23982 (amended), and 25–CA–23947 (amended)

April 21, 1997

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On September 24, 1996, Administrative Law Judge Wallace H. Nations issued the attached decision. The General Counsel and the Respondent filed exceptions and supporting briefs. The General Counsel and the Charging Party filed answering briefs to the Respondent's exceptions.

The Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified.[3]

[1] The Respondent has not excepted to the reinstatement remedy granted by the judge in regard to Sean Seyferth.

The Respondent claims that it had no work for Seyferth, Loyd, and Preecs. It contends that they were semi-skilled workers, who were unable to perform the allegedly skilled work performed by borrowed and temporary workers. The record, however, is devoid of evidence establishing that the borrowed or temporary employees were more skilled than Seyferth, Loyd, and Preecs. We agree with the judge that the General Counsel established a prima facie case of unlawful motivation in each instance. *Wright Line*, 251 NLRB 1083 (1981). We also agree with the judge that the Respondent's reasons for laying off Seyferth were pretextual, and that the Respondent failed to demonstrate why Preecs and Loyd would have been laid off, rather than less senior employees, in the absence of their protected activities.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent also suggests that remarks made by the judge at the hearing exhibited bias and that the judge's bias affected his rulings and decision. We have carefully reviewed the record and have found no evidence of bias or prejudice on the part of the judge.

We correct the judge's inadvertent error in sec. II(2) of his decision finding that the Respondent's threat to transfer Loyd from job to job until he quit was a violation of Sec. 8(a)(1) and (3). The threat, as the judge correctly stated in his conclusions of law, is a violation of Sec. 8(a)(1).

[3] We find merit in the General Counsel's exceptions to the administrative law judge's failure to provide in his recommended Order and in the notice to employees that the Respondent rescind the layoffs/discharges of Sean Seyferth, Michael Todd Preecs, and Papino Loyd; remove all references to the layoffs/discharges from their personnel files, and notify them that it has done so and that it will not use the layoffs/discharges against them in any way. We shall modify the order and notice to employees accordingly.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent C.R. General, Inc., Indianapolis, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(d) and reletter subsequent paragraphs.

"(d) Within 14 days of this Order, rescind the layoffs/discharges of Sean Seyferth on February 15, 1995, Michael Todd Preecs on May 24, 1995; and Papino Loyd on May 18, 1995; and remove all references to the layoffs/discharges from their personnel files; and within 3 days thereafter notify the employees in writing that it has done so and that it will not use the layoffs/discharges against them in any way."

2. Substitute the attached notice for that of the administrative law judge.

## APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT tell employees that we will transfer employees who formed, joined, or assisted the Union, Local 481, International Brotherhood of Electrical Workers, from job to job until they quit.

WE WILL NOT promulgate and thereafter maintain a rule prohibiting the distribution of union literature that precludes such activity in nonwork areas on nonwork time.

WE WILL NOT discriminatorily issue disciplinary warnings to employees because they engage in union or other protected concerted activities.

WE WILL NOT permanently lay off employees because they engage in union or other protected concerted activities.

WE WILL NOT assign employees more onerous work assignments because they engage in union or other protected concerted activities.

WE WILL NOT promulgate and thereafter maintain an application retention policy requiring applicants for employment to reapply every 5 days in order to discourage application for recall from layoff by employees who had engaged in union or other protected concerted activities.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Sean Seyferth, Michael Todd Preecs, and Papino Loyd full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make Sean Seyferth, Michael Todd Preecs, and Papino Loyd whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL, within 14 days from the date of the Board's Order, rescind and remove from our files any reference to the three written warnings issued to Michael Todd Preecs on April 26, 1995, and the two written warnings issued to Sean Seyferth on February 15, 1995, and WE WILL, within 3 days thereafter notify the employees in writing that we have done so and that we will not use the warnings against them in any way.

WE WILL, within 14 days from the date of the Board's Order, rescind and remove from our files any reference to the layoffs/discharges of Sean Seyferth on February 15, 1995, Michael Todd Preecs on May 24, 1995, and Papino Loyd on May 18, 1995, and WE WILL, within 3 days thereafter notify the employees in writing that we have done so and that we will not use the layoffs/discharges against them in any way.

WE WILL, within 14 days from the date of the Board's Order rescind and stop maintaining our rule prohibiting distribution of union literature in nonwork areas on nonwork times.

WE WILL, within 14 days from the date of the Board's Order, rescind and stop maintaining our rule requiring an applicant for employment to reapply every 5 days for the application to remain valid.

C.R. GENERAL, INC.

*Steve Robles, Esq.*, and *Belinda Brown, Esq.*, for the General Counsel.

*Michael L. Einterz, Esq.*, and *Andy Einterz, Esq.*, of Indianapolis, Indiana, for the Respondent.

*Neil E. Gath, Esq.*, of Indianapolis, Indiana, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Indianapolis, Indiana, on June 17 and 18, 1996. The charge in Case 25–CA–23778 was filed by International Brotherhood of Electrical Workers, Local Union No. 481 (the Union) on March 3, 1995.[1] The original charge in Case 25–CA–23947 was filed by Papino Loyd, an individual, on May 22, and an amended charge was filed on August 17. The charge in Case 25–CA–23982 was filed by the Union on May 31, and an amended charge was filed on August 17. An order consolidating cases, consolidated complaint, and notice of hearing was issued August 28. The consolidated complaint alleges that C.R. General, Inc. (Respondent or the Company) engaged in conduct in violation of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint wherein it admits the jurisdictional allegations, the labor organization status of the Union, the supervisory status of various of its employees and officers, and certain other factual allegations. It denies that it committed any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Indianapolis, Indiana, engages in the commercial, industrial, and residential installation of electrical systems and devices. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

##### A. *Background and Issues for Determination*

Respondent is an electrical contractor in Indianapolis, Indiana, and has been in business for about 24 years. It is owned and managed by its founder, Charlie Farrell, and his two sons, Michael and Steve Farrell. The Company's primary geographic work area is Marion County, Indiana, but it has some customers located throughout the State of Indiana. In the period December 1994 through May 1995, the Company employed about 35 employees engaged in electrical work. These employees, called field employees, are given classifications. The first is helper, which denotes a nonskilled or semiskilled employee. The second classification is that of an apprentice, which denotes an employee in an apprenticeship school; and the third classification is electrician, who would be a skilled employee. Respondent performs both electrical work related to construction or remodeling and what it calls service work. The construction and remodeling projects can range from small to very large projects, employing a number of people. Service jobs normally take less than a day. As pertinent, its supervisors within the meaning of the Act are

[1] All dates are in 1995 unless otherwise indicated.

the three Farrells, former Field Superintendent Paul Hammond, current Field Superintendent Doug Hayes, Foreman Craig Phillips, Foreman Brian Boll, Foreman Lester Dalton, and Supervisors Tim Bannister and Terry Elam. The Company is nonunion.

In or about December 1994, Union Representative Sean Seyferth began an attempt to organize the electrical workers employed by Respondent. In furtherance of this goal, he sought and obtained employment with the Company, and thereafter, until his layoff in February, solicited the support of other employees for the Union and obtained signed authorization cards. Two other individuals, Papino Loyd and Michael Preecs thereafter sought and obtained employment with Respondent and began aiding in the organizational effort. On February 22, the Union filed a petition for representation with the Board. Processing of this petition is blocked pending resolution of the alleged unfair labor practices involved in these consolidated cases. The complaint alleges that the Respondent unlawfully responded to this organizational campaign by the following specific actions:

1. About May 17, by Supervisor Terry Elam, telling Respondent's employees that Respondent would transfer employees who formed, joined, or assisted the Union, from job to job until they quit.

2. About February 15, issuing to Sean Seyferth two written warnings and then permanently laying off or discharging him.

3. About April 26, issuing three written warnings to employee Michael Preecs and then indefinitely laying off or discharging him on May 24.

4. About May 18, assigning a more onerous work assignment to employee Papino Loyd and then indefinitely laying off or discharging him on May 19.

5. About May 18, promulgating and thereafter maintaining a rule prohibiting the distribution of union literature at the Boehringer Manheim jobsite.

6. About May 19, changing its application retention policy in order to discourage the recall from layoff of employees who had engaged in union or other protected concerted activities.

Each of these matters will be discussed below under appropriate subheadings.

### B. *Did Respondent Unlawfully Take Adverse Personnel Actions Against Seyferth, Preecs, and Loyd?*

#### 1. Respondent's actions against Sean Seyferth

Sean J. Seyferth has been employed as a business representative organizer for the Union since November 1994. In an attempt at organizing C.R. General, he called Respondent on December 16, 1994, and asked if they were accepting applications for employment. The receptionist said they were, so he went in and filed one. On his application, he gave a false list of employers as references. Seyferth testified that fearing discrimination in hiring, he did not name his true prior employers as they were all union employers.[2] He also interviewed with Respondent's then-field superintendent, Paul Hammond.[3] Hammond asked some general questions designed to test Seyferth's knowledge of the electrical code and gave him an evaluation examination. Following the examination, Hammond commented that Seyferth had done well. Hammond hired him at a starting wage of $9.50 per hour, after some negotiation. Seyferth began working for Respondent on December 19, 1994. His first job was one at a U.S. Customs jobsite, which was supervised by Brian Boll. This assignment lasted until January 3. Boll commended him on his work on this project.

Seyferth's next assignment was at a Federal Express job at the Indianapolis airport. This job assignment lasted 6 days and was supervised by Lester Dalton. Following this assignment, Seyferth worked at the Eli Lilly job for about a month until he was laid off. His supervisor on this job was Craig Phillips. On January 25, Seyferth had a conversation with Supervisor Phillips just before starting time. Seyferth told Phillips that he was an organizer for the Union and asked if Phillips minded if he spoke to the other employees on the job about the benefits of unionization. According to Seyferth, Phillips said he did not need "that kind of shit" on his job and that he did mind. In the course of the conversation, Phillips told Seyferth that he had been doing a good job.

On January 27, Seyferth had a conversation with Hammond at the jobsite. Hammond asked Seyferth what were his intentions regarding organizing. Seyferth responded he intended to do a good job for the Company. Seyferth asked Craig, who was standing nearby, if he was doing a good job and Craig confirmed that he was. Seyferth said he was going to organize only on breaks and before and after work. Thereafter, until he was laid off on February 15, Seyferth attempted to organize for the Union at the jobsite. He distributed and got back some 15 signed authorization cards. Based on this showing of interest, Seyferth filed a representation petition with the Board on February 22.

On February 15, his final day with Respondent, Seyferth spoke with Hammond just before lunchtime. Hammond came to him and pulled him to a quiet area on the jobsite. Hammond gave Seyferth a letter informing him that "[d]ue to a reduction in our workload we are forced to reduce our manpower.[4] You will not be subject to rehire do [sic] to falsification on application for employment." Attached to this letter were two written warnings for poor attendance.

Michael Farrell testified that Hammond made the decision to lay off Seyferth, and that the only involvement he had with Seyferth's layoff was that he, Hammond, and Charlie Farrell had discussed Seyferth's warnings. Farrell testified that after Hammond had issued Seyferth a couple of warnings, Hammond consulted with the two Farrells to get a second opinion about what to do.[5] Farrell also testified that Hammond discussed with him the manpower needs for the Lilly project on which Seyferth was working. According to

[2] With respect to his application for employment, Seyferth admitted that his answers to questions were untrue in a number of respects. For example, he indicated on the form he was unemployed whereas he was employed by the Union. As earlier noted, he was not previously employed by a Florida company as he indicated on the form. His averment on the application that he had completed 3 years of the 4-year IBEW apprenticeship program before dropping out was also untrue.

[3] Hammond quit his employment on or about March 31 and was replaced by Doug Hayes.

[4] According to Seyferth, this job was about half finished at the time of his layoff.

[5] This assertion is clearly incorrect as the only warnings given Seyferth were those given to him for the first time at the time of his layoff.

Farrell, Hammond told him that the project was winding down and needed less manpower. He testified that the project was at a point where Respondent would have to shift employees to other projects or lay them off. Farrell testified that five or six employees were working at the Lilly site at the time of Seyferth's layoff. Farrell also testified that Hammond did not discuss the details of how many employees would be laid off or transferred from the Lilly job. On the other hand, he did confirm to Farrell that Seyferth would be laid off. At a later point in his testimony, Farrell remembered Hammond telling him that he had no place to transfer Seyferth.

Respondent's policy manual sets out certain factors to be considered when selecting employees for layoff. Section 7.17 of the Employer's policy manual, which covers reductions in force, states:

> Should economic conditions make it necessary to reduce the work force by layoff, the primary basis for determining who to retain on the work force will be jobs or work areas requiring employees, skill and capability of each employee, ability and willingness to work at the tasks that have been assigned, and length of service of the employee. In the case of an apprentice, consideration will be given if the person is attending apprenticeship school.

Farrell contends that Hammond considered the factors set out above in reaching the decision to lay off Seyferth. Farrell testified that the primary factors considered were attendance and seniority. Farrell asserts that Seyferth's union activity had nothing to do with his layoff. Curiously, Seyferth's falsification of his application, though prominently mentioned in his layoff letter as the reason he would not be recalled from layoff, was not mentioned as a reason for his layoff.[6]

I do not believe that the facts support either Respondent's asserted reason for the need for the layoff or the purported selection process used to select Seyferth for layoff. Looking first at the selection process, it is likely that Seyferth was the least senior employee on the job as Jesse Weaver, the only other employee hired in the same classification after him and before his layoff, was apparently assigned to another jobsite. Yet, because Respondent hired Weaver after him, Seyferth was not the least senior employee in the Respondent's work force in the same job classification. More telling, however, is the matter of Seyferth's purported poor attendance and Respondent's response to his problem.

As noted above, attached to Seyferth's layoff letter were two employee warning reports. The first one discussed in the record is dated February 15, 1995, and signed by Hammond on February 14, 1995, citing Seyferth for "repeated absence from work. Several unexcused." The warning form cites a previous warning on February 2. This refers to the second warning notice attached to the layoff letter, this one dated February 15, 1995, and signed by Hammond on February 2, 1995, citing Seyferth and stating, "[D]id not show at work and did not call in." It states that a "repeat of this action will result in termination." Neither of the warnings was signed by Seyferth though a signature line for the affected employee appears on the warning form. On both forms, the date of the warning has been altered, with another date being scratched out. On the first warning, the original date appears to have been February 14. According to Seyferth, Hammond made this change in his presence when the layoff packet was given to him. On the second February warning, the original date appears to be February 2. Without contradiction, Seyferth testified that he had never seen either warning until they were presented to him in the layoff packet.[7] I note that the helper noted above, Jesse Weaver, was terminated for poor attendance in May. The record reflects he was given an undetermined number of verbal and four written warnings before his discharge for attendance. As the written warnings are signed by Weaver, he was apparently given the warnings on the dates shown on their face, which were February 6, April 25, and May 3 and 10. Respondent's failure to give Seyferth the February 2 warning before his layoff on February 15, calls into question both the basis for the warning and Respondent's desire to improve Seyferth's attendance. Further doubt is cast on the accuracy of and motivation behind the warnings by Seyferth's uncontradicted testimony about his attendance.

Another page was attached to the layoff notice, this one being a calendar form, which purportedly listed Seyferth's excused and unexcused absences from the job. Seyferth testified without contradiction that certain entries on the calendar form were incorrect. Specifically, the form lists some absences and notes that the reason for the absence is unknown. First, the form indicates an excused absence on January 2 for unknown reasons. According to Seyferth, he called Hammond on December 27, 1994, and asked permission to be off on that date so that he could take a trip over the New Years holiday period. Seyferth testified that Hammond indicated that it was all right with him so long as Supervisor Brain Boll approved. Seyferth testified that Boll did approve and thus the absence was excused. Neither Hammond nor Boll testified in this proceeding.

The calendar form also shows an excused absence for unknown reasons on January 4. Seyferth testified that he reported back to work on January 3 and worked from 5 p.m. until 2:30 a.m. When he finished that morning, he asked Boll what to do next. Boll indicated he should call Hammond later that morning. He did so at about 9:30 a.m. Hammond told him to call back about 1 p.m. Seyferth did so and was told by Hammond to report for work on January 5. Thus, according to Seyferth, he was not assigned for work on January 4. The calendar form shows another excused absence on January 6 and another on January 13. Both of these absences carry the "unknown" code. It is difficult to understand how the absences could be excused with Respondent knowing the reason for the absences.

[6] Farrell testfied that Hammond discovered the falsifications in Seyferth's employment application, but could not remember how they were discovered or when. He does not remember this matter being discussed with him by Hammond nor did he recall the matter of the Company's refusal to consider Seyferth for rehire because of the falsification being discussed by him.

[7] Respondent's president, Charlie Farrell, agreed that one of the reasons for the Company's disciplinary system is to give warning to someone before their problem gets worse, and that the primary reason to issue a written warning to an employee is to try to correct the employee's problem or behavior before discharge becomes necessary. It is the Company's general policy to give an employee a verbal warning and one or more written warnings before discharging an employee. This would be the case with absenteeism.

The form also indicates that between January 29 and February 10, Seyferth was absent 7 days. The code on the form indicates that four of the absences were for illness and three were for unknown reasons. Absences on January 30 and February 2 and 10 are considered unexcused with the remainder considered excused. Seyferth testified that though the form would indicate that he only worked 3 days during this 2-week (or 10-workday) period, his payroll stub for this time frame indicates he worked 41 hours, or 5 days. Again, the failure of Respondent to give Seyferth the February 2 warning until his February 15 layoff, though Seyferth was present at work on February 3, and the inaccuracies in the form on which Respondent relies to issue the warnings, leads me to believe that Respondent's reliance on Seyferth's attendance in its purported layoff selection process is pretextual.

This finding is further supported when one looks at the purported need to lay off Seyferth at the Lilly jobsite and the absence of other work for him to do. Looking first at Respondent's assertion that the project was winding down, it seems to me to be placed in serious question by both the testimony of Seyferth and the uncontradicted testimony of another alleged discriminatee, Michael Preecs. Seyferth testified that the Lilly job appeared to be about half finished at the time of his layoff. Preecs was hired about a month after Seyferth's layoff, on April 11, in the same job classification formerly held by Seyferth. Shortly after his hiring, Preecs was sent to the Lilly jobsite. When he arrived at the site, there were four C.R. General employees working there, including himself. Within the next 2 days, all of these employees, except Preecs, quit to take union jobs elsewhere. Another C.R. General employee, Tim Bannister, was sent to the job to work with Preecs. Respondent's contention that there was no work left for Seyferth to perform at the Lilly site is contradicted by the mere fact of Preecs hiring subsequent to Seyferth's layoff and the assignment of Preecs to the Lilly job, at a time when there were three of Respondent's employees still working on the job.

Respondent introduced as its Exhibit 5 an analysis of all labor hours which reflects by pay period the number of field employees on the payroll, and the regular, overtime, other, and total hours worked by these employees.[8] As pertinent to Seyferth's layoff, this exhibit reflects that for the pay period immediately before his layoff, February 10, Respondent's field employees worked 1164.50 regular hours, 113 overtime hours, and 18.50 other hours, for a total of 1296 hours. In the payroll period in which he was laid off, February 17, these employees worked 1227.50 regular hours, 70 overtime hours, and 16 other hours for a total of 1313.50 hours. In the period immediately following his layoff, February 24, the employees worked 1222.50 regular hours, 136.50 overtime hours and 80 other hours, for a total of 1439 hours. There does not appear to me any drop off in available work at the time of the layoff demonstrated by the total hours worked during the three pay periods and by the significant amounts of overtime paid during these pay periods.

Respondent's assertion that the need to lay off Seyferth was occasioned by lack of work is also seriously undercut by its use of temporary or so-called borrowed employees.[9] As pertinent, in the period February 1 through May 19, Respondent utilized the services of temporary electrical employees hired through temporary employee providers or from other electrical contractors on a regular basis. During the period February 10 through March 3, which covers a time just before and for 2 weeks subsequent to Seyferth's layoff, it had two such employees. It paid them for about 209 regular hours and about 23 hours overtime. The temporary employee receiving the bulk of these hours was paid $13.92 an hour. The other temporary employee earned $17.50 per hour. It does not make economic sense to pay temporary employees from $4 to $8 an hour more to do the same work that Seyferth could perform. There is no contention that Seyferth was not capable of doing any work that Respondent had to do.

Further evidence that there was work for Seyferth to do and that union animus was behind his layoff is found in the testimony of Respondent's former electrical employee, Daniel Voglund. Voglund testified that he was hired as an electrician by Respondent on January 2 at an hourly rate of $12 an hour. He was initially assigned to the Boehringer Manheim project. At the time he worked at this job, there were about seven C.R. General employees working there. During January, he met with Seyferth because he had heard from other employees that Seyferth was engaged in organizing the Company. He later learned from Supervisor Terry Elam that Seyferth had been laid off. According to Voglund, Elam told him that the Company had a situation at the Lilly jobsite where a union guy got laid off. Voglund testified that after Seyferth's layoff, Respondent added three employees borrowed from another contractor to the Boehringer jobsite. At this time there were about 12 employees of Respondent working on this job. Voglund was transferred to another jobsite in March, and at that time the borrowed employees were still working for C.R. General.

Voglund's next assignment was in Brazil, Indiana, at a retirement center where he installed a fire alarm system. There

[8] The analysis does not in fact include hours worked by field employees as it does not count the hours worked by temporary employees, as discussed below.

[9] Charlie Farrell testified that Respondent at times borrows employees from other employers to do certain work on a jobsite. According to him, this practice occurs for several reasons. One would be a contractor has some good employees he does not have work for and he asks Respondent to help him out for a short time. Second, Respondent might have a short-term need for employees and might use some from another contractor or a temporary agency. This could occur when the Company had a need to finish a job quickly and needs additional help on a very short-term basis. It does not ususally hire employees unless it has fairly long-term work for them. Farrell remembers that in late February and during March, the Company borrowed two or three employees from ELCONCO Co. to perform work for C.R. General. He could not remember what work these employees performed. Contrary to the testimony of Charlie Farrell on the reasons for the use of temporary employees, it must be noted that this practice of using temporary workers only started at the beginning of Februrary 1995, about a week after Seyferth announced his intentions to organize Respondent's electrical work force. The practice ended at the same time Respondent laid off the other two organizers in May 1995, and has not been used since. I do find the timing of the use of the borrowed employees, commencing as it did at the time Respondent gained knowledge of the campaign and ending as it did with the layoff of the last know union organizers, to be coincidental. I find that it was part of the overall scheme formulated by Respondent to defeat the organizational effort.

were three C.R. General employees on this job at its inception and fourth was added later. This assignment lasted about 3 weeks. Voglund was then assigned to the Lilly job at the end of March. However, he refused this assignment and voluntarily quit working for Respondent.

Because of the variance between the facts and Respondent's proffered reasons for Seyferth's layoff, I find that these reasons are pretextual and the true reason for his layoff was because of Seyferth's organizational efforts on behalf of the Union. Michael Farrell admitted knowledge of these activities and indeed, Hammond, the person who supposedly made the decision to lay off Seyferth, actually questioned Seyferth about his intentions in this regard. Seyferth's immediate supervisor told Seyferth in regard to the Union effort, "we don't need that kind of shit on this job." Michael Farrell testified that in his personal opinion, that of the second highest management figure in the Company, Seyferth's organizational efforts were not welcome news to the Company. I find that General Counsel has satisfied his burden of establishing a prima facie case of unlawful motivation in the layoff of Seyferth as required by *Wright Line*, 251 NLRB 1083 (1981). In general, under the tenents of *Wright Line*, to establish unlawful motivation, the General Counsel must prove the discriminatee's protected activity, the employer's knowledge of that activity, and the employer's hostility or animus towards this protected union activity. I find that the General Counsel has not only satistifed this burden of proof, but has gone further and clearly established that the reasons asserted by Respondent for Seyferth's layoff are untrue and pretextual. Accordingly, I find that Respondent has violated Section 8(a)(1) and (3) of the Act by issuing written warnings to Seyferth and permanently laying him off on Feburary 15, as alleged in the complaint.

2. Respondent's adverse actions against Papino Loyd

Papino Loyd was hired on or about April 3 by Respondent. His wage rate was $8 an hour and he typically worked a 40-hour week. During his employment with Respondent, Loyd worked at three jobsites. The first was called Castleway,[10] which was located in Indianapolis. His supervisor on this job was Steve Farrell. This assignment lasted about 2 weeks. He was then assigned to a job denoted the Boehringer Manheim project. This job was located in Indianapolis and was supervised by Terry Elam. The third assignment was an apartment complex and this job was supervised by Brian Boll. On April 11, he wore to work a T-shirt which displayed the words "Salt IBEW 481." At about the same time, Loyd, at breaktimes, began talking to coworkers about the Union and gave union literature to employees indicating interest in the Union.

Loyd attended an employee meeting called by Respondent on May 11. The meeting was held after work and was conducted by Charlie Farrell. According to Loyd, Farrell stated that he was happy with the people still employed by Respondent because he felt they wanted to be employed by Respondent.[11] Farrell then said the Company was doing well and that he had just signed two new contracts that would keep them busy until the end of the year. Employee Michael Preecs attended this meeting and testified that Charlie Farrell told the employees that the Company's business outlook was good and they had plenty of work until the end of the year. With respect to this meeting, Charlie Farrell could not remember what was said. This was a regularly scheduled quarterly meeting with employees to let them air any concerns they may have and to inform them of any information that management deemed important. Farrell did not remember whether or not the Company had signed contracts on any new jobs. He did not recall telling employees in the May 11 meeting that Respondent had signed some new contracts. On the other hand, he did not deny saying this. Michael Farrell confirmed that his father told the employees that he was happy with them and that business prospects looked good.

On May 17, Loyd passed out a union flyer which gave readers information about Respondent and its health and retirement benefits. He performed this task in the lunch area of the Boehringer Manheim jobsite during his lunchbreak. After the conclusion of his lunchbreak, Loyd was asked by his supervisor, Elam, if he had been passing out handbills during lunch. Loyd responded affirmatively. Loyd testified that Elam told him that he would not be fired for this activity, but would probably be transferred from job to job until he got frustrated and quit. Elam, though employed by Respondent at the time of hearing, did not testify and I accept Loyd's testimony. Elam's statement to Loyd, a fairly new employee, is clearly coercive and is clearly a threat that constitutes a violation of Section 8(a)(1) and (3) of the Act, as alleged in the complaint. The facts reveal that Respondent followed up on its threat of adverse action to Loyd because of his union activity.

On the same day, Loyd was instructed to call Respondent's project manager, Doug Hayes, about his next assignment. According to Loyd, Hayes said he was to report back to the Boehringer Manheim project and that Elam knew what he was to do. When he reported for work the next day, he was assigned the task of cleaning out a company trailer used to store materials. This was the first time he had been given this task and he considered it less desirable than the electrical work he had been performing. According to Loyd, based on statements made to him by Elam, there was more important electrical work available for Loyd. Again, Elam did not testify and I accept Loyd's testimony. Respondent offered no reason for assigning Loyd this less desirable work,[12] and following as it did on the heels of Elam's threat, I find that the assignment was motivated by union animus and violated Section 8(a)(1) and (3) of the Act. *J & B Smith Co.*, 280 NLRB 539, 545 (1986); *Laminates Unlimited,* 292 NLRB 595, 599–600 (1989).

Respondent did not stop in its efforts to halt Loyd's union activity with its threat and assignment of less desirable work. On May 18, while he was engaged in cleaning the materials trailer, Loyd was approached by Hayes. Hayes showed him a fax that Respondent had purportedly received from its customer Boehringer Manheim. This fax stated that it was against the customer's rules to have literature of any kind passed out on the jobsite. Whether the customer actually had

[10] This project's name is spelled in various ways in the transcript. I have adopted the spelling "Castleway" for uniformity, without knowing which spelling is correct.

[11] In addition to the layoff of Seyferth, a number of other employees had quit to take other jobs.

[12] It likewise did not deny that the work was less desirable than the work that Loyd normally performed.

such a rule is not known, as no one testified on behalf of the customer and no one placed in evidence any rules of the customer. However, by enforcing this rule, Respondent adopted it. This rule is clearly overly broad as it banned distribution of all literature by Loyd even though he was distributing the union literature on his lunchbreak in the break area of the jobsite. Enforcement of such a rule violates Section 8(a)(1) of the Act. *Times Publishing Co.*, 231 NLRB 207 fn. 6 (1977); *M&R Investments*, 284 NLRB 871 (1987).

On May 19, Loyd did not report to work because of a doctor's appointment. According to Loyd, Elam had been given prior notice of the appointment. The next day, May 20, Loyd called Elam to get his job assignment for the next day. Elam said that as far as he knew, Loyd was to report back to the Boehringer Manheim project because he had a lot of technical work that needed to be done. He was also instructed to call Hayes, which he did the next day. Hayes told him that he was being laid off because of lack of work.[13] Hayes further instructed Loyd to file a new job application with Respondent every 5 days to remain actively available for recall. Loyd testified that he had never heard of such a requirement before. The matter of Loyd's layoff will be discussed below with the layoff of Michael Preecs.

3. Respondent's adverse actions against Michael Preecs

Michael Todd Preecs was employed as an electrical apprentice for Respondent. He was asked by Seyferth to apply for work there to aid in the organizational effort. Preecs applied for a job with Respondent in March and was interviewed by its owners, Charlie and Mike Farrell. He called the office and was told that Respondent was not accepting applications, but that if he would come to the office and meet with the owners, they might accept one. The owners asked about his past experience and let him make application. They then interviewed him, asking, inter alia, why he wanted to work for Respondent. During the course of the interview, Mike Farrell told him the Company was having problems with the Union. Preecs was hired on that date at the rate of $10.50 an hour.

His first day of work was April 11, and he was assigned to the Castleway project. His supervisor on this job was Steve Farrell. On his first day of work, he wore a union T-shirt and hat, both of which displayed an IBEW Local 481 logo. No one in management commented on his clothing. On this date, Preecs and fellow employee Papino Loyd spoke with Steve Farrell, telling him that they supported the union organizing effort but that it would not affect their work. Preecs was transferred from this jobsite 2 days later. According to Preecs, he learned of his transfer when he overheard Steve and Charlie Farrell talking on the company radio. He heard his name and that of Loyd mentioned and shortly thereafter, Steve Farrell told them that they were being transferred to the Lilly jobsite.

When he arrived at the Lilly site, there were four C.R. General employees working there, including himself. Within the next 2 days, with the exception of Preecs, all of these employees quit to take union jobs. Another C.R. General employee, Tim Bannister, was sent to the job to work with Preecs.

On April 25, Preecs saw and had a conversation with Seyferth on the Lilly jobsite about midmorning. Seyferth testified that he visited the Eli Lilly jobsite in his capacity as a union representative. He went onto the site to speak with the foreman of another contractor, with whom the Union had a contractual relationship. He testified that he was trying to resolve a dispute over distribution of overtime among union members working on the site. Seyferth described certain security measures taken on the Lilly jobsite. There was a fenced parking lot for workers and Respondent shuttled its jobsite employees in a company van to the work site. To enter the work area, the workers had to have a card which would let them through a turnstile or otherwise show identification to a guard. On the date of Seyferth's visit to the site, he spoke with the guard. According to Seyferth, the guard recognized him as a C.R. General employee as he had worked on the site before his layoff. Seyferth told the guard that he had to be on the site for a very short visit and the guard let him onto the site. While on the site, he ran into and had a conversation with Preecs, though Seyferth denies that his visit was in anyway connected to this conversation. He also spoke briefly with Tim Bannister while on the site.

According to Preecs, after running into Seyferth, Seyferth asked how he was doing and they engaged in a general conversation. They then walked to where Bannister was working as Preecs needed to get some material from him. The two men were accompanied by a number of employees of the contractor Seyferth had come on to the site to see. According to Preecs, Seyferth introduced himself to Bannister and Bannister said he did not want to talk with him on worktime. Seyferth left at this point and Preecs and Bannister talked.

Later that same day, Preecs spoke with Bannister again. Bannister told him that Preecs needed to speak with Cliff Bivins, the superintendent of construction on the jobsite. Preecs then met with Bivins and the head of security for the jobsite. They asked Preecs if he had let Seyferth on the job or had given him his ID Badge and Preecs said he had not. They then asked if Preecs knew how Seyferth had gotten on the jobsite and Preecs replied that he did not know. They asked what Seyferth was doing on the site and Preecs said it had to do with a union contractor at the site.

Two days later, before work, Bannister gave Preecs three written warnings disciplining him. Each of these warnings involve the visit to the jobsite by Seyferth. One disciplines Preecs for leaving his work area without permission in the company of Seyferth.[14] The second disciplines him for talking with a union representative on company time. The third disciplines him for escorting Seyferth and not reporting Seyferth's presence on the jobsite to security.[15] Preecs' comments on these warnings comports with his testimony set out

[13] Loyd subsequently received a layoff letter which was dated May 19. Thus Respondent laid off Loyd 2 days following Elam's threat and 1 day after being given a more onerous work assignment and having his distribution of literature stopped by Hayes.

[14] Preecs testified that he had never been told that he needed permission to leave his work area to secure materials he needed on the job. As the only other company employee on the site was Bannister, and as it was Bannister who Preecs left his work area to find, I find that it would have been impossible for Preecs to have secured prior permission to leave his work area.

[15] Preecs denied any knowlege that there existed a rule that required him to report the presence of a union representative to security and Respondent introduced no rule which would have required such action.

above. One of the warnings threatens dismissal if he engaged in union activity on company time. They also refer to two prior warnings.[16] Preecs refused to sign the three warnings relating to his conversation with Seyferth until they were explained to him by someone from management. About 2 days later, Respondent's shop superintendent, Doug Hayes, came to visit Preecs. Hayes asked why he would not sign the warnings and Preecs replied that there was no basis for the warnings. Preecs agreed to sign them if he could write on them his version of the events of April 25. Hayes agreed. Hayes did not testify in this proceeding. Michael Farrell could not specifically remember the matter of these warnings being brought to his attention, though he testified that Hayes usually brings disciplinary warnings to employees to his attention. He testified that in any event, he took no action against Preecs as a result of the warnings.

There is no showing by any credible evidence that Preecs did any of the things he was warned about in the discipline given him on April 26. Neither Bannister nor Hayes testified about the events in question. There is no showing that Respondent conducted any investigation into the matters contained in the warnings. Therefore, I accept fully the testimony of Preecs and Seyferth in this regard. Thus, there is no evidence that Seyferth was not properly on the jobsite as he testified. It is clear from the evidence adduced that Preecs had nothing to do with getting him onto the site. There is nothing in the evidence to suggest that Seyferth was on the site for any reason other than the one he gave. There is no evidence that Preecs was under any obligation to report Seyferth's presence on the site to anyone. Preecs could not have received prior permission to leave his work station and go to Bannister for materials, as Bannister was his supervisor on the job, if Preecs had an onsite supervisor. There is likewise no showing that Seyferth and Preecs discussed union matters in the short walk to where Bannister was working.

Given Respondent's total failure to explain the basis on which it gave Preecs these warnings, and its apparent lack of any investigation of the matter, I find that the warnings are yet another example of its union animus and its desire to stifle union support. I find that the warnings were discriminatorily motivated and in violation of Section 8(a)(1) and (3) of the Act. *Clark Manor Nursing Home*, 254 NLRB 455 (1981).

Preecs continued working at the Lilly site for a little longer on an off-and-on basis as Respondent's work at the site was nearing completion. He also worked part time at another project. Thereafter, he was transferred to the Castleway project. Some of this work was service work. About May 22, Preecs began handbilling for the Union at the Castleway project. He gave out the handbills to members of the public at lunch and for about a half hour after work. He continued handbilling the next 2 days and on May 24 was approached by his supervisor. Contrary to normal practice, the supervisor told Preecs to call Doug Hayes that evening to find out what he was to do the next day. Prior to this, Preecs' job assignments had always been given to him by his immediate supervisor. Preecs called Hayes and was told that the Company had no more work for him. He was advised that his application for recall would remain active for 2 weeks and thereafter he would have to reapply.[17]

As was the case with Seyferth's layoff, Respondent contends that lack of work prompted the layoffs of Loyd and Preecs. On January 13, Respondent had 34 field employees. On June 16, it had 14 employees. Thus the company lost 20 employees during this period.[18] According to Farrell, Respondent's Exhibit 5 shows its workload and manpower needs decreasing over the period covered by the exhibit. Farrell explained the loss of business by saying that the Respondent finished a few of its larger projects and it did not get some contracts that it had expected to get. Farrell further testified that Respondent was unable to maintain a backlog of work to sustain its peak employee level. Additionally, one of its estimators quit during March and this cut the number of jobs it could bid.

As noted earlier with respect to the discussion of Seyferth's layoff, Respondent placed in evidence a showing of its number of field employees and hours worked by pay period for the timeframe 1 through 6 through the end of 1995. As pertinent to this decision, in summary, Respondent's Exhibit 5 reflects that for the pay periods from 1 through 6 through February 17, it employed 34 field employees who worked between approximately 1300 to 1500 hours a pay period. During the pay period of February 24, the employee level dropped to 32 employees though the hours worked remained at the 1400 hour level. Beginning with the pay period March 3 through period April 14, the number of hours worked per pay period dropped to between 1000 to 1100, and the field employee complement dropped from 32 to 21. During the pay periods from April 21 through May 26, the hours worked per period dropped to a range from about 650 hours to 790 hours. The employee complement during this period began at 22, dropped to 17, went up to 19, and ended at 16.[19] Thereafter, for the next 5 months the employee complement remained steady at 14 and the average hours worked per period was about 650 per period.

During the period from February 1 through June 17, 20 field employees left the employ of Respondent. During this period, it hired seven employees. Of the number of field em-

[16] Preecs was given a warning on April 20, for being tardy or absent, and not calling in. Preecs testified that he did call in that day. He was given a warning on April 18 for not being at the company toolbox on time to start work. Preecs testified that he had been at the box at the proper time and had left to find another employee. As Respondent offered no evidence with respect to these warnings other than the warning forms, I accept Preecs' testimony relating to them.

[17] Preecs was given a written layoff letter which shortened the period to 5 days.

[18] G.C. Exh. 13 reflects a listing of employees beginning February 1, 1995 and ending June 17, 1996. It shows the hire date, ending date, and reason for separation, if separated, for each employee. This list reflects that 28 employees left for a variety of reasons during the period February 1 and June 14, 1995. Of these employees eight were either supervisors or management employees.

[19] Respondent went from 22 employees on April 21 down to 17 on May 5, but then went back up to 19 employees during the next pay period. Farrell explained that two employees, Douglas Schneider and Dannielle Burden were hired to help the warehouse manager straighten up the warehouse and take a yearend inventory. With respect to Burden, Farrells explanation makes sense. She is shown on G.C. Exh. 13 as a warehouse helper hired on May 15 and quit on August 9. On the other hand Schneider is classified as an apprentice 2. He was hired on May 3 and is still employed. Another employee, Joseph Griffin, was hired on May 11 as a service technician and is still employed.

ployees leaving Respondent, 12 left to take union jobs, 3 quit for unknown reasons, 2 were terminated for poor attendance and the 3 discriminatees in this case were laid off for lack of work. An employee was hired as an apprentice in August. Five other field employees were hired between the end of October and the end of December. At the time of the layoff of Loyd and Preecs, Respondent was using the services of about six temporary or borrowed employees. These employees were paid from $16 per hour to $20.61 per hour, far more than Respondent paid Preecs or Loyd. Farrell testified that after May 19, Respondent did not use any more temporary or borrowed employees.

Farrell testified that Doug Hayes was responsible for laying off Preecs and Loyd. However, Farrell could not recall discussing their layoffs with Hayes. He could not recall the specifics of any conversation with Hayes about manpower needs in late May.

I do not believe that Respondent's defense of its layoff of Preecs and Loyd has merit. Loyd testified without contradiction that he was told by his supervisor, Terry Elam, the day before his layoff that there was a lot of work to do on the project to which he was assigned. Charlie Farrell told employees on May 11, 1 week before Loyd's layoff, and 2 weeks before Preecs' layoff, that there was plenty of work until the end of the year. Though Respondent asserts that this bright outlook changed when two large projects were postponed, there was no evidence adduced by Respondent concerning when this circumstance became known. Moreover, Respondent offered no explanation as to why Preecs and Loyd were selected for layoff over other employees. There were two field employees hired after Preecs and Loyd, one hired a week before Loyd's layoff, and they are still working for Respondent. There was not even an attempt to show that Respondent followed the selection criteria set out in its policy manual.

Both Loyd and Preecs were permanently laid off almost immediately after they began openly distributing union literature at their respective jobsites. Because of the timing of their layoff combined with the foregoing reasons why Respondent's economic defense is not credibly established in this record, its demonstrated animus toward union activity, and specifically its unfair labor practices directed toward Preecs and Loyd, as well Respondent's total failure to demonstrate why they would be laid off rather than less senior employees, I find that Respondent laid off the two union organizers to finally rid itself of any identifiable employees assisting in the organizing effort. Consequently, I find that Respondent has thus violated Section 8(a)(1) and (3) of the Act, as alleged in the complaint. *Manno Electric*, 321 NLRB 278, 292 (1996); *Dilling Mechanical Contractors*, 318 NLRB 1140 (1995); *Wright Line*, supra.

### C. *Did Respondent Unlawfully Promulgate and Apply a Reapplication Rule?*

As noted above, when laying off Preecs and Loyd, the Company informed them that they would have to reapply for employment every 5 days in order for their application to remain valid.[20] This requirement was apparently made known for the first time with the layoff of Preecs and Loyd, and no evidence was adduced to show that the policy change has been diseminated to other employees. The Company's employee policy manual has no such requirement and the new policy contravenes the clear language of the policy manual. This manual states: "Employees laid off will be considered employees for a period of six months after date of layoff."

Michael Farrell testified that the 5-day requirement came into being at some point in mid-1995. According to him, this policy was instituted at some unspecified time before May after a discussion between himself, Charlie Farrell, and their labor counsel. Farrell testified that this policy was instituted because "we were getting flooded with applications and it was becoming a nuisance to the administrative staff. I only have one gal that works with me that, when somebody comes in to take an application, that does that and it became too time-consuming for us to . . . keep all those files. So we, basically, instituted the, you know, come in and re-apply every five days because we just had too many applications that were coming in on file." He further testified that he believed this requirement tended to decrease the paperwork load, because people who are not serious about employment with the Company quit reapplying.

Respondent's explanation for the rule does not seem plausible to me. There is no certainty that such a rule would cut down on applications and common sense would indicate that they would more likely increase. Further, such a rule would require almost daily weeding out of applications to discard those over 5 days old. It would also require an employee of Respondent to constantly deal with persons refilling applications. Given the timing of the announcement of the rule, that is, with the laying off of Preecs and Loyd, the more credible reason for instituting this rule is to discourage reapplication by the two discriminatees and to avoid recalling them. In the absence of a plausible reason for the rule, and given the Respondent's pattern of discrimination against union supporters, I find that the rule has a discriminatory motivation and violates Section 8(a)(1) and (3) of the Act.

## CONCLUSIONS OF LAW

1. Respondent, C.R. General, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has engaged in conduct in violation of Section 8(a)(1) of the Act by:

(a) About May 17, by Supervisor Terry Elam, telling Respondent's employees that Respondent would transfer employees who formed, joined, or assisted the Union, from job to job until they quit.

(b) About May 18, promulgating and thereafter maintaining a rule prohibiting the distribution of union literature at the Boehringer Manheim jobsite.

4. Respondent has engaged in conduct in violation of Section 8(a)(1) and (3) of the Act by:

(a) About February 15, issuing to Sean Seyferth two written warnings and then discharging him.

[20] Respondent has used this policy to avoid recalling either Loyd or Preecs. Neither continued to refile applications every 5 days and when Respondent hired a new field employee in August, it did not attempt to recall the two discriminatees.

(b) About April 26, issuing three written warnings to employee Michael Preecs and then indefinitely laying off or discharging him on May 24.

(c) About May 18, assigning a more onerous work assignment to employee Papino Loyd and then indefinitely laying off or discharging him on May 19.

(d) About May 19, changing its application retention policy in order to discourage the recall from layoff of employees who had engaged in union or other protected concerted activities.

5. The unfair labor practices engaged in by Respondent are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily laid off its employees Sean Seyferth, Michael Todd Preecs, and Papino Loyd, must, within 14 days, offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.[21] It must make Sean Seyferth, Michael Todd Preecs, and Papino Loyd whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent having discriminatorily issued three written warnings to Michael Todd Preecs on April 26, 1995, and having so issued two written warnings to Sean Seyferth on February 15, 1995, it must rescind those warnings, remove them from the affected employees' personnel files, and inform the two employees in writing that this has been done and that such warnings will not be used against them in any future personnel action.

The Respondent, having discriminatorily enforced an overbroad no-distribution rule, must rescind such a rule.

The Respondent, having discriminatorily implemented and enforced a rule requiring an applicant for employment to reapply every 5 days for the application to remain valid, must rescind such rule.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[22]

## ORDER

The Respondent, C.R. General, Inc., of Indianapolis, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that Respondent will transfer employees who formed, joined, or assisted the Union, from job to job until they quit.

(b) Promulgating and thereafter maintaining a rule prohibiting the distribution of union literature, which precludes such activity in nonwork areas on nonwork time.

(c) Discriminatorily issuing disciplinary warnings to employees because they engage in union or other protected concerted activities.

(d) Permanently laying off employees because they engage in union or other protected concerted activities.

(e) Assigning employees more onerous work assignments because they engage in union or other protected concerted activities.

(f) Promulgating and thereafter maintaining its application retention policy requiring applicants for employment to reapply every 5 days in order to discourage the recall of employees from layoff, who had engaged in union or other protected concerted activities.

(g) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. The Respondent shall take the following affirmative actions deemed necessary to effectuate the policies of the Act.

(a) Within 14 days of this Order, offer Sean Seyferth, Michael Todd Preecs, and Papino Loyd full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(b) Make Sean Seyferth, Michael Todd Preecs, and Papino Loyd whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Within 14 days of this Order, rescind and remove from its files any reference to the three written warnings issued to Michael Todd Preecs on April 26, 1995, and the two written warnings issued to Sean Seyferth on February 15, 1995 and, within 3 days thereafter, notify the employees in writing that it has done so and that it will not use the warnings against them in any way.

(d) Within 14 days of this Order rescind and stop maintaining its rule prohibiting distribution of union literature in nonwork areas on nonwork times.

(e) Within 14 days of this Order, rescind and stop maintaining its rule requiring an applicant for employment to reapply every 5 days for the application to remain valid.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Indianapolis, Indiana, copies of the attached notice

[21] With respect to Sean Seyferth, I do not find that his falsification of certain entries on his application for employment form bar him from reinstatement. He was not laid off for such action, was not shown to be a bad worker, and there was no showing that Respondent would not have hired him but for its reliance on the false information. The false entries were made out of Seyferth's correct fear that he would be discriminated against if his union affiliation became known to Respondent. *Fiber Glass Systems*, 278 NLRB 1255, 1257 (1986); *Kroger Co.*, 311 NLRB 1187 (1993); *Architectural Glass & Metal Co.*, 316 NLRB 789, 790 (1995).

[22] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

marked "Appendix."[23] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 3, 1995.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[23] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."